

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RAJAGOPALA SAMPATH RAGHAVENDRA, :  
also known as, "Randy S. :  
Raghavendra," :

Plaintiff, : 06 Civ. 6841 (PAC)(HBP)

-against- :

THE TRUSTEES OF COLUMBIA :  
UNIVERSITY, et al., :

Defendants.

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RAJAGOPALA SAMPATH RAGHAVENDRA, :  
also known as, "Randy S. :  
Raghavendra," :

Plaintiff, : 08 Civ. 8120 (PAC)(HBP)

-against- :

NATIONAL RELATIONS LABOR :  
BOARD, et al., :

Defendants.

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RAJAGOPALA SAMPATH RAGHAVENDRA, :  
also known as, "Randy S. :  
Raghavendra," :

Plaintiff, : 09 Civ. 0019 (PAC)(HBP)

-against- :

OPINION  
AND ORDER

THE TRUSTEES OF COLUMBIA :  
UNIVERSITY, et al., :

Defendants.

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PITMAN, United States Magistrate Judge:

I. Introduction

By motions dated February 24, 2012 and April 23, 2012, plaintiff moves for the recusal of the Honorable Paul A. Crotty, United States District Judge, in the following related actions: 06 Civ. 6841 (Docket Item 167); 08 Civ. 8120 (Docket Item 87) and 09 Civ. 0019 (Docket Item 63). Plaintiff makes these motions pursuant to (1) 28 U.S.C. § 455(a), 455(b)(1); (2) 28 U.S.C. § 144 and (3) 22 N.Y. Comp. Codes R. & Regs. § 100.3(D)(2), (E)(1)(b).

In support of his motions, plaintiff has submitted (1) an affirmation (Docket Item 167 in 06 Civ. 6841); (2) a memorandum of law (Docket Item 168 in 06 Civ. 6841) and (3) a reply affirmation (Docket Item 171 in 06 Civ. 6841).<sup>1</sup>

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<sup>1</sup>Plaintiff's recusal motions in the above-referenced actions are identical, and, thus, I cite only to his submissions in the 06 Civ. 6841 action in this Opinion and Order. I also note that plaintiff's reply addresses a separate motion that he filed in the 06 Civ. 6841 action. In this Opinion and Order, however, I consider only the portion of plaintiff's reply that pertains to the recusal motions.

By letter dated March 5, 2012, the Columbia Defendants<sup>2</sup> move to strike plaintiff's recusal motions from the record.<sup>3</sup> Specifically, the Columbia Defendants contend that it is possible to deduce the amount of the settlement in this matter from plaintiff's motion papers, which is in violation of the settlement agreement. The Stober Defendants<sup>4</sup> also move to strike plaintiff's recusal motions from the record<sup>5</sup> (Docket Item 169 in 06 Civ. 6841). Specifically, the Stober Defendants contend that plaintiff has violated Judge Crotty's February 19, 2010 Order (Docket Item 149 in 06 Civ. 6841), which directed him to cease filing papers containing ad hominem attacks against them.

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<sup>2</sup>The Columbia Defendants include: The Trustees of Columbia University; Lee C. Bollinger; Robert Kasdin; William R. Scott; Joseph A. Ienuso; Karen A. Fry and Susan Rieger.

<sup>3</sup>The Columbia Defendants' letter is dated March 5, 2012 and addresses only the 06 Civ. 6841 action. However, because plaintiff's recusal motions in the above-referenced actions are identical, I consider the Columbia Defendants' motion to strike as applicable to each recusal motion.

<sup>4</sup>The Stober Defendants include Louis D. Stober, Jr. and the Law Offices of Louis D. Stober, Jr., LLC.

<sup>5</sup>The Stober Defendants' opposition likewise only addresses the 06 Civ. 6841 action because it was filed prior to plaintiff's recusal motions in the 08 Civ. 8120 and 09 Civ. 0019 actions. However, again, because plaintiff's recusal motions are identical, I consider the Stober Defendants' motion to strike as applicable to each recusal motion.

For the reasons set forth below, (1) each of plaintiff's recusal motions are denied and (2) the defendants' respective motions to strike are denied.

## II. Facts

The facts underlying the above-referenced actions have been set forth at length in many decisions of this Court, and, thus, I do not recite them again here.<sup>6</sup> Judge Crotty succinctly summarized the underlying facts in Raghavendra v. Trustees of Columbia Univ., 686 F. Supp. 2d 332, 334-35 (S.D.N.Y. 2010), aff'd in part, rev'd in part on other grounds, 434 F. App'x 31 (2d Cir. 2011):

[P]laintiff Rajagopala S. Raghavendra ("Raghavendra") alleges that the Trustees of Columbia University in the City of New York ("Columbia") violated his civil rights and retaliated against him when he complained about it. The alleged conduct commenced in 2001, leading up to his claimed wrongful termination in 2005. Litigation commenced in 2006 and has dragged on since then, resulting on occasion in other lawsuits initiated by Raghavendra against different defendants on various theories of liability.

On July 30, 2009, at the conclusion of an all day mediation session which involved Raghavendra, his

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<sup>6</sup>For example, the facts underlying these actions are set forth in greater detail in Raghavendra v. Trustees of Columbia Univ., 06 Civ 6841 (PAC)(HBP), 2008 WL 2696226 (S.D.N.Y. July 7, 2008) (Crotty, D.J.) and Raghavendra v. N.L.R.B., 08 Civ. 8120 (PAC)(HBP), 2009 WL 5908013 (S.D.N.Y. Aug. 27, 2009) (Pitman, M.J.) (Report and Recommendation).

attorney, and Columbia, plus their counsel, as well as a mediator, Raghavendra signed a document entitled, "Terms of Settlement between Rajagopala S. Raghavendra ("Raghavendra") and the Trustees of Columbia University in the City of New York ("Columbia")" (the "Settlement Agreement"). The Settlement Agreement provides for the withdrawal of all of Raghavendra's claims, in return for the payment of a very substantial dollar settlement award, and it also addresses how employment references will be handled in the future. The Settlement Agreement states: "The terms set forth above are final and binding upon the parties." Almost immediately after signing the Settlement Agreement, Raghavendra filed a flurry of motions seeking to disavow the Settlement Agreement and objecting to any payment of legal fees [to the Stober Defendants].

Plaintiff's application to set aside the settlement agreement and his objection to the Stober Defendants' motion for legal fees were unsuccessful. Judge Crotty determined that the settlement agreement entered into by plaintiff and the Columbia Defendants was valid and enforceable, and, further, that the Stober Defendants were entitled to recover their full contingency fee as provided for under the retainer agreement, *i.e.*, one-third of the settlement proceeds. Raghavendra v. Trustees of Columbia Univ., supra, 686 F. Supp. 2d at 335-38.

The Court of Appeals for the Second Circuit affirmed Judge Crotty's determination that the settlement agreement was valid and enforceable, although it reversed his determination concerning the amount of legal fees recoverable by the Stober Defendants and remanded the matter for further factual findings

on that specific issue. Raghavendra v. Trustees of Columbia Univ., supra, 434 F. App'x at 31-32. On July 11, 2012, I issued a Report and Recommendation, of which the disposition is still pending, addressing the specific amount of fees to be awarded to the Stober Defendants.

### III. Analysis

#### A. Standards Applicable to a Recusal Motion

The Honorable Kiya A. Matsumoto, United States District Judge, succinctly set forth the standards applicable to a recusal pursuant to Sections 144, 455(a) and 455(b)(1) in Clemmons v. Comm'r of Soc. Sec., No. 11-cv-1645 (KAM), 2011 WL 6130926 at \*3-\*4 (E.D.N.Y. Dec. 8, 2011). With respect to Section 144, Judge Matsumoto explained:

[Section 144] provides:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A

party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

"The Second Circuit has articulated a standard for legal sufficiency under Section 144: 'an affidavit must show the objectionable inclination or disposition of the judge; it must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment.'" Williams v. New York City Housing Auth., 287 F. Supp. 2d 247, 249 (S.D.N.Y. 2003) (quoting Rosen v. Sugarman, 357 F.2d 794, 798 (2d Cir. 1966)) (internal quotation marks omitted).

Notably, "[t]hough the language of Section 144 appears to indicate otherwise, submitting an affidavit to the Court under this provision does not yield automatic recusal of the judge on the matter." Id. at 248 (citing 13A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3551 (2003)). "The mere filing of an affidavit of bias, pursuant to 28 U.S.C. § 144 . . . 'does not require a judge to recuse [herself or] himself.'" In re Holocaust Victim Assets Litig., Nos. 09-cv-3215, 96-cv-4849, 2010 WL 4038794, at \*3 (E.D.N.Y. Oct. 1, 2010) (quoting Nat'l Auto Brokers Corp. v. Gen. Motors Corp., 572 F.2d 953, 958 (2d Cir. 1978)). Rather, "the judge must review the facts included in the affidavit for their legal sufficiency and not recuse himself or herself unnecessarily." Williams, 287 F. Supp. 2d at 249 (citing Rosen, 357 F.2d at 797); see In re Drexel Burnham Lambert Inc., 861 F.2d 1307, 1312 (2d Cir. 1988) ("A judge is as much obliged not to recuse himself [or herself] when it is not called for as he [or she] is obliged to when it is.") (citation omitted).

Clemmons v. Comm'r of Soc. Sec., supra, 2011 WL 6130926 at \*3;

see also Thorpe v. Zimmer, Inc., 590 F. Supp. 2d 492, 498

(S.D.N.Y. 2008) (McMahon, D.J.); Hoffenberg v. United States,

333 F. Supp. 2d 166, 171-72 (S.D.N.Y. 2004) (Sweet, D.J.).

With respect to Sections 455(a) and 455(b)(1), Judge Matsumoto explained:

First, pursuant to Section 455(a), a judge must disqualify [himself] "in any proceeding in which h[is] impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The Second Circuit has noted that this subsection "governs circumstances that constitute an appearance of partiality, even though actual partiality has not been shown." Chase Manhattan Bank v. Affiliated FM Ins. Co., 343 F.3d 120, 127 (2d Cir. 2003). "Deciding whether there is an appearance of bias is 'not mechanical,' however, because 'disqualification for lack of impartiality must have a reasonable basis.'" Hoffenberg v. United States, 333 F. Supp. 2d 166, 171 (S.D.N.Y. 2004) (quoting In re Aquinda, 241 F.3d 194, 201 (2d Cir. 2001)). Consequently,

Section 455(a) requires a showing that would cause an objective, disinterested observer fully informed of the underlying facts [to] entertain significant doubt that justice would be done absent recusal. Where a case . . . involves remote, contingent, indirect or speculative interests, disqualification is not required. Moreover, where the standards governing disqualification have not been met, disqualification is not optional; rather, it is prohibited.

Aquinda, 241 F.3d at 201 (internal quotation marks and citations omitted).

"While Subsection 455(a) addresses the appearance of impropriety, Subsection 455(b) 'addresses the problem of actual bias by mandating recusal in certain specific circumstances where partiality is presumed.'" Hoffenberg, 333 F. Supp. 2d at 172 (quoting United States v. Bayless, 201 F.3d 116, 126 (2d Cir. 2000)). Section 455(b)(1) provides that a judge who has "a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding" shall disqualify [himself]. 28 U.S.C. § 455(b)(1).



Clemmons v. Comm'r of Soc. Sec., supra, 2011 WL 6130926 at \*3-\*4; see also Da Silva Moore v. Publicis Groupe & MSL Grp., 11 Civ. 1279 (ALC)(AJP), 2012 WL 2218729 at \*8-\*10 (S.D.N.Y. June 15, 2012) (Peck, M.J.); Thorpe v. Zimmer, Inc., supra, 590 F. Supp. 2d at 494, 497-98; Hoffenberg v. United States, supra, 333 F. Supp. 2d at 171-73.

"'[C]ourts considering the substantive standards of §§ 144 and 455(b)(1) have concluded that they are to be construed in pari materia.'" Clemmons v. Comm'r of Soc. Sec., supra, 2011 WL 6130926 at \*4, quoting Apple v. Jewish Hosp. & Med. Ctr., 829 F.2d 326, 333 (2d Cir. 1987); see also Thorpe v. Zimmer, Inc., supra, 590 F. Supp. 2d at 494, 498; Hoffenberg v. United States, supra, 333 F. Supp. 2d at 172; United States v. Ahmed, 788 F. Supp. 196, 204 (S.D.N.Y. 1992) (Edelstein, D.J.). Thus, "where the court finds that a plaintiff fails to present a basis for recusal under Section 455, plaintiff's motion for relief under Section 144 must also fail." Clemmons v. Comm'r of Soc. Sec., supra, 2011 WL 6130926 at \*4, citing Longi v. Cnty. of Suffolk, No. CV 02-5821 (SJF)(WDW), 2006 WL 3403269 at \*1 (E.D.N.Y. Nov. 22, 2006).

In contrast, Section 455(a) "is broader than §§ 144 and 455(b)(1) in that it does not contain the term 'personal' and therefore, [as opposed to Sections 144 and 455(b)(1),] it is not

an absolute requirement that the disqualifying bias spring from an extrajudicial source.'" United States v. Ahmed, supra, 788 F. Supp. at 202 n.6, quoting United States v. Johnpoll, 748 F. Supp. 86, 89 (S.D.N.Y. 1990) (Carter, D.J.); see also Apple v. Jewish Hosp. & Med. Ctr., supra, 829 F.2d at 333. "Nevertheless, while [S]ection 455(a) does not require an extrajudicial source for the alleged bias, whether the recusal basis stems from an extrajudicial source is a relevant consideration." United States v. Ahmed, supra, 788 F. Supp. at 202 n.6, citing United States v. Coven, 662 F.2d 162, 168 (2d Cir. 1981).

Finally, plaintiff also asserts Sections 100.3(D)(2) and 100.3(E)(1)(b) of the New York Rules of Judicial Conduct as grounds for the recusal of Judge Crotty.<sup>7</sup> Specifically, Section 100.3(D)(2) provides that "[a] judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action." 22 N.Y. Comp. Codes R. & Regs. § 100.3(D)(2). Section 100.3(E)(1)(b) provides that "[a] judge shall disqualify himself . . . in a proceeding in which the judge's impartiality might be reasonably questioned, including

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<sup>7</sup>These sections apply to "[a]ll judges in the [New York State] unified court system." 22 N.Y. Comp. Codes R. & Regs. § 100.6(A).

. . . where . . . the judge knows that: . . . (iii) [he] has been a material witness concerning it [i.e., the matter in controversy]." 22 N.Y. Comp. Codes R. & Regs. § 100.3(E)(1)(b). With respect to this section, it is the case that "Section 455(a)'s recusal standard is virtually identical to the rule espoused in Canon 3(E)(1)." United States v. Ahmed, supra, 788 F. Supp. at 201, citing United States v. Helmsley, 760 F. Supp. 338, 341 (S.D.N.Y. 1991) (Walker, D.J.).

B. Procedural Requirements  
Applicable to a Recusal Motion

A recusal motion pursuant to Sections 144, 455(a) and 455(b)(1) must satisfy certain procedural requirements. Judge Matsumoto has also succinctly set forth these requirements in Clemmons v. Comm'r of Soc. Sec., supra, 2011 WL 6130926 at \*4-\*6.

With respect to the timeliness of a recusal motion, Judge Matsumoto explained:

"[B]oth Section 144 and all subsections of Section 455 are construed to require a timely application, which our Circuit reads as a 'threshold' issue – i.e., one to be evaluated before matters of substance are reached." Hoffenberg, 333 F. Supp. 2d at 173 (internal quotation marks and citation omitted); see also Lamborn v. Dittmer, 726 F. Supp. 510, 514 (S.D.N.Y. 1989) (noting affidavits filed under Section 144 are "strictly scrutinized" for timeliness and form, and a court must determine whether these procedural requirements have been met before reaching the merits of the recusal motion); see United States v. Nelson,

CR-94-823, 2010 WL 2629742, at \*2 (E.D.N.Y. June 28, 2010) ("[A] judge who is presented with a [Section 144] motion for recusal . . . must first determine whether the procedural requirements have been met . . . .").

\* \* \*

An affidavit in support of a recusal motion is timely filed when it is "made at the earliest possible moment after obtaining facts demonstrating a basis for recusal." Lamborn, 726 F. Supp. at 514. "Recusal motions are often denied on the basis of untimeliness when there has been only a short delay." Id. at 515. See, e.g., United States v. Durrani, 835 F.2d 410 (2d Cir. 1987) (affirming district court's rejection of recusal motion as untimely because motion was filed four months after events of which movant complained); Universal City Studios, Inc. v. Reimerdes, 104 F. Supp. 2d 334, 350 (S.D.N.Y. 2000) (recusal motion brought after four-month delay deemed untimely).

Notably, however, "the actual time elapsed between the events giving rise to the charge of bias or prejudice and the making of the motion is not necessarily dispositive." Apple, 829 F.2d at 333-34. In addition to lapse of time, the court considers the following four factors in assessing the timeliness of a motion: (1) "whether the movant has participated in a substantial manner in trial or pre-trial proceedings," (2) "whether granting the motion would represent a waste of judicial resources," (3) "whether the motion was made after the entry of judgment," and (4) "whether the movant can demonstrate good cause for delay." Lamborn, 726 F. Supp. at 514-15 (citing Apple, 829 F.2d at 333); see, e.g., Apple, 829 F.2d at 334 (motion filed one month after entry of judgment and two months after events giving rise to the charge of bias or prejudice presumptively untimely); Katzman, 939 F. Supp. 274, 277 (S.D.N.Y. 1996) (two-month delay deemed untimely because movant "knew the facts on which the motion to disqualify is based, yet failed to file the motion

while the court continued to hear and decide matters in the case").<sup>[8]</sup>

Clemmons v. Comm'r of Soc. Sec., supra, 2011 WL 6130926 at \*4-\*5; see also Da Silva Moore v. Publicis Groupe & MSL Grp., supra, 2012 WL 2218729 at \*10-\*11; Hoffenberg v. United States, supra, 333 F. Supp. 2d at 172.

With respect to the form of the recusal motion itself, Judge Matsumoto explained:

An affidavit alleging "personal bias or prejudice either against [the moving party] or in favor of any adverse party" pursuant to Section 144 must "be accompanied by a certificate of counsel of record stating that it is made in good faith." 28 U.S.C. § 144. "The reason for this requirement is that since the court cannot test the truth of the claimed facts, the law requires the counsel's certification that the motion is made in good faith." Nelson, 2010 WL 2629742 at \*6 (citation and internal quotation marks omitted).

. . . . Because plaintiff is proceeding pro se, [he] cannot submit the certification of counsel as required by the statute, however. See Longi, 2006 WL 3403269,

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<sup>8</sup>"The timeliness requirement that governs claims brought under Section 455 is not explicit." Clemmons v. Comm'r of Soc. Sec., supra, 2011 WL 6130926 at \*4 n.3. However, "the requirement 'that a party 'move for recusal in a timely fashion . . . has been effectively read into the statute.'" Clemmons v. Comm'r of Soc. Sec., supra, 2011 WL 6130926 at \*4 n.3, quoting Nasca v. Cnty. of Suffolk, No. 09-CV-0023 (JFB)(ETB), 2010 WL 3713186 at \*2 (E.D.N.Y. Sept. 13, 2010); see also Da Silva Moore v. Publicis Groupe & MSL Grp., supra, 2012 WL 2218729 at \*10. Thus, "motions to recuse under Section 455 are subject to the same requirement of timeliness as those under Section 144." Clemmons v. Comm'r of Soc. Sec., supra, 2011 WL 6130926 at \*4 n.3, citing Katzman v. Victoria's Secret Catalogue, 939 F. Supp. 274, 277 (S.D.N.Y. 1996) (Sweet, D.J.).

at \*1 (Section 144 "requires a good faith certification from counsel and as such, may not be available to pro se litigants"); see also Williams, 287 F. Supp. 2d at 249 ("[Party's] affidavit, which is submitted pro se and without a certificate of counsel of record, fails on this threshold matter.").

Section 455(b)(1) does not require a certificate of counsel, however, and the substantive inquiries under Section 144 and Section 455(b)(1) are the same. Rothstein v. Fung, No. 03-CIV-674, 2003 WL 22829111, at \*2 (S.D.N.Y. Nov. 26, 2003). Accordingly, although plaintiff's application is defective in form for lack of a certificate of counsel under Section 144, the court will examine the merits of plaintiff's motion, particularly because it challenges the impartiality of the court. See Lamborn, 726 F. Supp. at 515 (quoting Paschall v. Mayone, 454 F. Supp. 1289, 1300 (S.D.N.Y. 1978)) ("Despite defendant's motion being deficient in both timeliness and form, since the impartiality of the court has been questioned, it is important to address [defendant's] contentions on the merits.").

Clemmons v. Comm'r of Soc. Sec., supra, 2011 WL 6130926 at \*5-\*6; see also Hoffenberg v. United States, supra, 333 F. Supp. 2d at 177 n.5.

C. Application of the  
Foregoing Principles

1. Arguments in  
Support of Recusal

Plaintiff's motion papers are virtually identical to other motions that he has previously filed in this Court. Moreover, plaintiff's papers largely contain information that is immaterial to his recusal motions. For example, in plaintiff's

affirmation which spans 134 pages, he does not reference any conduct of Judge Crotty until pages 102-03! Instead, plaintiff spends an inordinate amount of time (1) reciting the alleged facts underlying his various actions, (2) criticizing the Stober Defendants' representation of him in the 06 Civ. 6841 action and opposing their claim for fees and (3) attacking the July 30, 2009 settlement.

When plaintiff does finally discuss Judge Crotty's putative bias in the above-referenced actions, it is clear that his only evidence of bias is his personal disagreement with Judge Crotty's Order dated February 19, 2010 upholding the settlement in this matter and closing his actions (see, e.g., Plaintiff's Affirmation in Support of Motion for Recusal of the District Court Judge(2) [sic], dated Feb. 10, 2012 ("Pl.'s Aff."), ¶¶ 400-01, 410-20, 423-26, 455-500, annexed as part of Plaintiff's Notice of Motion for Recusal of District Court Judge(2) [sic], dated Feb. 24, 2012 ("Pl.'s Not. of Mot.") (Docket Item 167 in 06 Civ. 6841); see also Plaintiff's Memorandum of Law in Support of Motion for Recusal of District Court Judge(2) [sic], dated Feb. 24, 2012 ("Pl.'s Mem.") (Docket Item 168 in 06 Civ. 6841)). For example, plaintiff argues:

On February 19, 2010, Hon. Judge Paul A. Crotty issued almost a "blanket" Court Order against the Plaintiff without any fact-finding and legal basis

whatsoever and without even bothering to review or without even having any significant understanding of the Plaintiff's most important claims in multi-million dollar claims in his 08-CV-8120 action and 8-years old 09-CV-0010 action [sic] . . . .

Honorable Judge Crotty repeatedly denied even Plaintiff's absolute (constitutional) right to "formally" discharge his own (dishonest) attorney ([f]ired attorney(3) Stober [sic]) and instead allowed him (Stober) to basically HIJACK his own client's (Plaintiff's) 8-year old, multi-action . . . multi-million dollar constitutional rights litigation [sic].

\* \* \*

Fired attorney(3) Stober [sic] was allowed to file various self-serving and (frivolous) motions and cross-motions against his own client (the Plaintiff) . . . .

Judge Crotty simply struck [] each and every of the [sic] Plaintiff's motions against [f]ired attorney(3) Stober [sic] and granted each of his (Stober's) self-serving cross-motions and bogus attorney fee claims even though they were in blatant violation of the Attorney Rules of Professional Conduct . . . .

(Pl.'s Aff. ¶¶ 455-56, 460, 463-64; see also Pl.'s Mem. at 14, 17-21) (emphasis in original).

As evidence of Judge Crotty's putative "bias" against him, plaintiff cites a number of statements that Judge Crotty made in either an Order or during an in-person conference with the parties. Specifically, plaintiff refers to the following statements: (1) "By the time of his discharge, Stober had worked for two years, and his work had produced a substantial, almost inconceivable, monetary benefit for [plaintiff]" (Pl.'s Aff. ¶



483; Pl.'s Mem at 11; see also Docket Item 149 at 7 in 06 Civ. 6841); (2) "This matter has dragged on far too long" (Pl.'s Aff. ¶ 487; Pl.'s Mem. at 5; see also Docket Item 139 in 06 Civ. 6841); (3) "I know. [This matter has been going on for] longer than World War II" (Pl.'s Aff. ¶ 487; Pl.'s Mem. at 5) and (4) "This matter has proceeded for so long, with so many different variations, that it would be fundamentally unfair to extend it further by not closing it finally, once and for all" (Pl.'s Aff. ¶ 488; Pl.'s Mem. at 5; see also Docket Item 149 at 6 in 06 Civ. 6841).

Finally, plaintiff contends that recusal is proper because (1) Judge Crotty was aware of the Stober Defendants' putative violations of the New York Rules of Professional Conduct, and, instead of taking appropriate action against them in accordance with Section 100.3(D)(2), he instead struck all of plaintiff's motions and closed his various actions and (2) Judge Crotty is a "material witness" in the Stober Defendants' alleged perjury and legal malpractice committed during the February 17, 2010 conference (Pl.'s Aff. ¶¶ 496-97; see also Pl.'s Mem. at 21-22).

Before addressing the merits of plaintiff's recusal motions, I first consider whether he has complied with the necessary procedural requirements.

2. Plaintiff's Recusal  
Motions are Untimely

Plaintiff complains of conduct by Judge Crotty arising out of a court conference held on February 17, 2010 and an Order issued on February 19, 2010. However, plaintiff waited until approximately twenty-four to twenty-six months later -- February 24, 2012 and April 23, 2012, respectively -- to file his recusal motions. A delay of this length renders plaintiff's filings untimely. See, e.g., Omega Eng'g, Inc. v. Omega, S.A., 432 F.3d 437, 448 (2d Cir. 2005) (delay of seven months rendered recusal motion untimely); United States v. Durrani, 835 F.2d 410, 427 (2d Cir. 1987) (delay of four months rendered recusal motion untimely); Apple v. Jewish Hosp. & Med. Ctr., supra, 829 F.2d at 334 (delay of two months rendered recusal motion untimely); Univ. City Studios, Inc. v. Reimerdes, 104 F. Supp. 2d 334, 349-50 (S.D.N.Y. 2000) (Kaplan, D.J.) (delay of four months rendered recusal motion untimely).

Although the courts do consider four additional factors in assessing the timeliness of a recusal motion -- i.e., whether the movant has substantially participated in the litigation, whether granting the motion would be a waste of judicial resources, whether the movant made the motion after the entry of judgment and whether the movant can demonstrate good cause for

the delay -- none of these factors assist plaintiff here. See Apple v. Jewish Hosp. & Med. Ctr., supra, 829 F.2d at 333-34.

With respect to the first factor, the dockets in the above-referenced actions clearly demonstrate that plaintiff has participated in his actions in a substantial manner. He has filed numerous motions over the years and has sent many letters to the Court. In two of the three actions at issue, i.e., the 08 Civ. 8120 and the 09 Civ. 0019 actions, he was proceeding pro se. Moreover, plaintiff has expressly stated on the record many times that he has done the majority of work in each of his actions (see, e.g., Pl.'s Aff. ¶¶ 51, 408, 427). Most recently, he has asserted this contention at length in his opposition papers to the Stober Defendants' claim for fees (see, e.g., Docket Items 163, 164 and 171 in 06 Civ. 6841).

With respect to the second factor, granting plaintiff's recusal motions would represent a waste of judicial resources. Plaintiff's actions have already proceeded in this Court for several years. Moreover, the above-referenced actions were settled in a July 30, 2009 settlement agreement between plaintiff and the Columbia Defendants. The validity of this settlement agreement was recently affirmed by the Second Circuit, with only one issue remaining in the matter -- i.e., the amount of legal fees recoverable by the Stober Defendants. Raghavendra v.

Trustees of Columbia Univ., supra, 434 F. App'x at 31-32. Thus, once the fee dispute is resolved by Judge Crotty, nothing remains to be done in the 06 Civ. 6841, 08 Civ. 8120 and 09 Civ. 0019 actions.

With respect to the third factor, plaintiff filed his recusal motions approximately six to eight months after the Second Circuit affirmed the validity of the settlement agreement in this matter. Although the Second Circuit did remand the matter for further factual findings concerning the fee dispute, for all practical purposes, there is nothing left to litigate with respect to the merits of plaintiff's claims.

Finally, with respect to the fourth factor, plaintiff provides no explanation whatsoever for the delay in filing his recusal motions. Thus, as a result, he cannot be said to have demonstrated good cause for the delay.

Accordingly, on the basis of the foregoing, plaintiff's recusal motions are denied because they are untimely.<sup>9</sup>

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<sup>9</sup>Plaintiff has not submitted a certificate of counsel with his recusal motions in accordance with Section 144, and, thus, a portion of his motions are also procedurally deficient on this ground. However, because I find that plaintiff's motions are untimely, I need not discuss this deficiency further.

3. Plaintiff's Recusal Motions  
Are, In Any Event, Without Merit

Even had plaintiff's motions been timely, they would still be denied for lack of merit. As already noted, plaintiff moves for the recusal of Judge Crotty simply because he disagrees with certain unfavorable rulings issued in February 2010. In addition, plaintiff disagrees with Judge Crotty's opinion that his actions have been pending for far too long.

However, "'judicial rulings alone almost never constitute a valid basis for a bias or partiality motion,' and 'opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.'" Weisshaus v. Fagan, 456 F. App'x 32, 35 (2d Cir. 2012), quoting Liteky v. United States, 510 U.S. 540, 555 (1994); see also Loeber v. Spargo, 391 F. App'x 55, 59 (2d Cir. 2010); Kashelkar v. Vill. of Spring Valley, 06 Civ. 6108 (CS)(LMS), 2008 WL 4684260 at \*1 (S.D.N.Y. Oct. 16, 2008) (Seibel, D.J.) (collecting cases). Plaintiff alleges no facts whatsoever demonstrating such a "deep-seated favoritism or antagonism" on the part of Judge Crotty that would make fair judgment impossible in these actions.

Plaintiff's argument that recusal is proper because Judge Crotty violated Sections 100.3(D)(2) and 100.3(E)(1)(b) of the New York Rules of Judicial Conduct is similarly deficient. These sections, by their terms, apply only to judges of the Unified Court System. 22 N.Y. Comp. Codes R. & Regs. § 100.6(A). The New York State Constitution defines the "Unified Court System" as:

There shall be a unified court system for the state. The state-wide courts shall consist of the court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court and the family court, as hereinafter provided. The legislature shall establish in and for the city of New York, as part of the unified court system for the state, a single, city-wide court of civil jurisdiction and a single, city-wide court of criminal jurisdiction, as hereinafter provided, and may upon the request of the mayor and the local legislative body of the city of New York, merge the two courts into one city-wide court of both civil and criminal jurisdiction. The unified court system for the state shall also include the district, town, city and village courts outside the city of New York, as hereinafter provided.

N.Y. Const. Art. 6, § 1(a). Judge Crotty is a federal district judge in the Southern District of New York, and, therefore, the sections referred to by plaintiff are not applicable to him.

Accordingly, while I deny plaintiff's recusal motions as untimely, they are, in any event, without merit.

D. Defendants'  
Motion to Strike

Both the Columbia Defendants and the Stober Defendants move to strike plaintiff's recusal motions from the record.

The Columbia Defendants contend that, in violation of the settlement agreement, the settlement amount in this matter can be deduced from plaintiff's motion papers. Even if this may be, there is a strong public interest in having open court proceedings, and, on this basis, I deny the motion to strike. However, to address the Columbia Defendants' concern that the settlement amount in this matter remain confidential, they may submit to my Chambers a list of all the paragraphs and/or pages that they would like redacted from plaintiff's filings on the basis that such paragraphs and/or pages contain improper references to the settlement amount. If they are correct, I shall have the offending material redacted from the filed copies of these documents.

The Stober Defendants contend that plaintiff is in violation of Judge Crotty's February 19, 2010 Order directing him to cease filing papers containing ad hominem attacks against them. Plaintiff's papers do contain such attacks; however, I deny the motion to strike at this time. The Stober Defendants are free, if they so choose, to make a motion to hold plaintiff

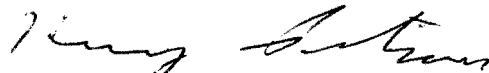
in contempt of court for violating Judge Crotty's Order. Any such motion should reference the specific paragraphs and/or pages of plaintiff's filings that the Stober Defendants believe violated Judge Crotty's Order.

IV. Conclusion

For all the foregoing reasons, (1) each of plaintiff's recusal motions are denied and (2) the defendants' respective motions to strike are denied. The Clerk of the Court is directed to mark as closed the following docket items: Docket Item 167 (06 Civ. 6841); Docket Item 87 (08 Civ. 8120) and Docket Item 63 (09 Civ. 0019).

Dated: New York, New York  
July 13, 2012

SO ORDERED,



HENRY PITMAN  
United States Magistrate Judge

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